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ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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April 9, 2002

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INDEPENDENT

The Honorable Dan Burton
Chairman
Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burton:

It is our understanding that you have invited Governor Tom Ridge, the Director of the Office of Homeland Security, to provide a closed briefing to members of the Government Reform Committee on April 11, 2002. We are writing to request that the Committee instead hold a hearing that is open to the public. For the reasons set forth below, we believe members of the public and their elected representatives in Congress are entitled to a hearing with Governor Ridge, the federal official with primary responsibility for protecting the nation against future terrorist attacks.

I. NEED FOR PUBLIC FORUM

As you know, Governor Ridge has previously refused to allow his staff to appear before our Committee in a public setting. On March 21, 2002, Governor Ridge's principal deputy, Admiral Steve Abbot, refused to appear before the Subcommittee on National Security, Veterans Affairs, and International Relations. Although Admiral Abbot initially agreed to conduct a public briefing, he demanded that the public be excluded the day before he was scheduled to appear. When Ranking Minority Member Dennis Kucinich insisted that the public be allowed to attend, Admiral Abbot refused to provide the briefing and the briefing was cancelled.

Within the past week, however, the Administration has reconsidered its position. According to the *Washington Post*, Governor Ridge now says he is "willing to answer questions in a public setting."¹ This reversal makes sense considering that Governor Ridge has appeared

¹*Ridge to Brief Two House Committees; Director Will Appear Before Reform, Energy and Commerce*, *Washington Post* (Apr. 3, 2002) (on line at <http://www.washingtonpost.com/wp-dyn/articles/A57192-2002Apr3.html>).

before the public and the press on numerous occasions, including press conferences, newspaper and magazine interviews, television and radio talk shows, and public events.

These latest statements by Governor Ridge should have put to rest the question of whether he would appear before the Committee in a public forum. Unfortunately, you have apparently decided the briefing should remain closed. In comments to the *Washington Post* and the *New York Times*, majority staff director Kevin Binger said the Committee would continue to meet in closed session “to ensure informality.”²

Your insistence on excluding the public makes little sense to us. The Committee has not sought classified information from Governor Ridge. As stated by Rep. Chris Shays, Chairman of the Subcommittee on National Security, Veterans Affairs, and International Relations, “I would like it to be open because it’s not a national security briefing.”³ Until now, the only obstacle preventing Governor Ridge from appearing before this Committee in public was Governor Ridge’s own objection. Now that he has expressed his willingness to publicly answer questions from this Committee, we should not ignore his offer.

II. NEED FOR FORMAL HEARING

It is also important that Governor Ridge’s appearance occur in a hearing, not an informal “briefing.” In addition to providing an open forum, hearings have procedures that ensure fairness to witnesses and to members of the Committee. These procedures also assist members in their efforts to obtain information. At hearings, for example, the oath ensures truthfulness, and the five-minute rule ensures orderly questioning. Committee hearing rules also require witnesses to submit written statements in advance so members can prepare thoughtful questions.

Informal briefings, on the other hand, lack procedures designed to protect these prerogatives. Without them, members who are in the minority have no right to question witnesses, to obtain information for the official hearing record, or to seek redress from the Chairman if these rights are not observed. At informal briefings, witnesses can refuse to answer a member’s questions or even walk out the door, as Admiral Abbot did on March 21, 2002.

Although Governor Ridge has agreed to appear before the Committee in public, he now insists that he not appear at a hearing, preferring instead to provide an informal briefing. Administration officials cite a constitutional basis for this distinction, claiming that Governor

²*Ridge to Brief 2 House Panels, but Rift With Senate Remains*, New York Times (Apr. 4, 2002); *see also Ridge Will Meet Informally With 2 House Committees*, Washington Post (Apr. 4, 2002).

³*Special Report with Brit Hume*, Fox News Network (Mar. 21, 2002).

Ridge should not be required to answer questions at a formal hearing because, “as a member of the president’s staff and not the head of a cabinet agency, Mr. Ridge [is] not required to testify.”⁴

There is, however, no constitutional basis for affording presidential advisors absolute immunity from appearing before Congress on all topics. According to the Congressional Research Service (CRS):

Congress has a constitutionally rooted right of access to the information it needs to perform its Article I legislative and oversight functions. Generally, a congressional committee with jurisdiction over the subject matter, which is conducting an authorized investigation for legislative or oversight purposes, has a right to information held by the executive branch in the absence of either a valid claim of constitutional privilege by the executive or a statutory provision whereby Congress has limited its constitutional right to information.⁵

Under the Executive Order establishing his position, Governor Ridge has sweeping operational functions, budgetary functions, and planning functions.⁶ His responsibilities include developing a comprehensive national strategy to protect domestic security, identifying priorities for gathering intelligence, and coordinating a host of additional functions, including public health preparedness, assistance to state and local authorities, border security, critical infrastructure, transportation systems, and victim assistance. These matters are critical to domestic security, do not involve confidential advice provided to the President, and fall squarely within our oversight jurisdiction. We are entitled to inquire about them at a hearing.

III. CONGRESSIONAL PRECEDENT

The White House has argued that its position is based on historical precedent. White House spokesman Ari Fleischer, for example, has said: “Congress should not ask for testimony that goes above and beyond the historical bipartisan traditions.”⁷ He also said requests for Governor Ridge to testify would be “a dramatic break from the long-standing traditions that

⁴*Ridge to Brief 2 House Panels, but Rift With Senate Remains*, New York Times (Apr. 4, 2002).

⁵*Presidential Advisers’ Testimony Before Congressional Committees: A Brief Overview*, Congressional Research Service, 13-14 (Apr. 5, 2002) (RL31351).

⁶Executive Order 13228 (Oct. 8, 2001).

⁷*Senate GOP Divided Over Ridge Testimony*, The Hill (Mar. 20, 2002).

Congress has previously upheld vis-a-vis the executive branch.”⁸

House Speaker Dennis Hastert made a similar argument, saying “I’m not sure that the adviser to the president ought to be grilled by Congress, because I think he owes the president his best information, his best knowledge.”⁹ House Majority Leader Dick Armey went even further, saying, “I do not believe that the Democrats would give Tom Ridge a fair, decent, honest and objective hearing These folks cannot be trusted on this subject. They are not going to handle it responsibly.”¹⁰

The historical record makes clear, however, that many presidential advisors who were not agency heads and were not confirmed by the Senate nevertheless have testified numerous times before Congress. On April 5, 2002, CRS issued a report detailing previous instances in which presidential advisors have testified before Congress.¹¹ The CRS list includes dozens of personal presidential advisors from various administrations. Some of the most prominent of these witnesses include Sherman Adams, Assistant to President Eisenhower; Patrick J. Buchanan, Special Consultant to President Nixon; Alexander M. Haig, Jr., Staff Coordinator to President Nixon; Leonard Garment, Assistant to President Nixon; Lloyd Cutler, Counsel to President Carter; and Zbigniew Brzezinski, Assistant to President Carter for National Security Affairs.¹²

Under your leadership, the Committee on Government Reform appears to have called more White House advisors than any other committee in Congress. You brought dozens of President Clinton’s advisors to testify before the Committee in formal hearings or sworn depositions during the last several sessions of Congress. These included some of the most senior presidential advisors, including three White House Chiefs of Staff, three White House Counsels, and scores of other deputies and assistants. Some of those witnesses included:

- Erskine Bowles, Chief of Staff
- Mack McClarty, Chief of Staff
- John Podesta, Chief of Staff
- Maggie Williams, Chief of Staff to the First Lady

⁸Congress, *White House Fight Over Ridge Status*, Washington Post (Mar. 21, 2002).

⁹*Fox News Sunday*, Fox News Network (Mar. 24, 2002).

¹⁰*Evans, Novak, Hunt & Shields*, Cable News Network (Mar. 23, 2002).

¹¹CRS RL31351, *supra* note 5, at 7-11.

¹²The CRS list is by no means exhaustive. CRS did not include personal advisors to President Reagan, such as national security advisor John Poindexter, who testified during the Iran-Contra hearings. See *Hearings Suggest Reagan Had Wider Contra Role*, Washington Post (July 19, 1987). CRS researchers informed my staff that they have identified several additional examples and will be expanding their report in the near future.

- Beth Nolan, Counsel to the President
- Charles Ruff, Counsel to the President
- Jack Quinn, Counsel to the President
- Cheryl Mills, Deputy Counsel to the President
- Harold Ickes, Assistant to the President and Deputy Chief of Staff
- Bruce Lindsey, Assistant to the President and Deputy Counsel to the President
- Bob Nash, Assistant to the President and Director of Presidential Personnel
- Evelyn Lieberman, Assistant to the President and Deputy Chief of Staff for Operations
- Douglas Sosnick, Counselor to the President
- Michael Imbroscio, Associate Counsel to the President
- Dimitri Nionakis, Associate Counsel to the President
- Lanny Breuer, Special Counsel to the President
- Loretta Avent, Deputy Assistant to the President for Intergovernmental Affairs
- John Emerson, Deputy Assistant to the President
- Nancy Hernreich, Deputy Assistant to the President for Appointments and Scheduling
- Marsha Scott, Deputy Director and Chief of Staff of Presidential Personnel

Many of the appearances by these witnesses were not “voluntary” in the normal sense of the word. White House Counsel Beth Nolan, for example, was subpoenaed four separate times. When White House advisors resisted your invitations to testify, you subpoenaed them or threatened to do so. Marsha Scott, the Deputy Director and Chief of Staff of Presidential Personnel, gave deposition testimony for over 18 hours over a period of four days. When she refused to continue without an assurance on the scope or length of future questioning, the Committee subpoenaed her, without proper notice, and forced her to appear at an emergency hearing that same evening.¹³ When another White House advisor resisted providing information by claiming executive privilege, you called his actions “meaningless legal mumbo-jumbo” and “obviously a transparent ploy to provoke wasteful and time-consuming squabbles over documents.”¹⁴ You then threatened to issue a subpoena the next day requiring him to testify before the Committee.¹⁵

IV. Conclusion

There should not be one set of rules for Republican witnesses and a different set of rules

¹³House Committee on Government Reform and Oversight, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, *Hearings to Receive the Testimony of Marsha Scott Regarding the White House Database Investigation*, 105th Cong. (Apr. 1, 1998) (H.Rept. 105-190).

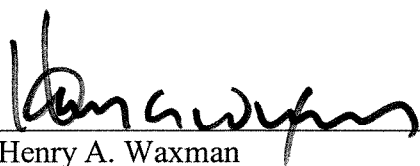
¹⁴Letter from Chairman Dan Burton, Committee on Government Reform, to Dimitri Nionakis, Associate Counsel to the President (May 1, 2000).

¹⁵*Id.*

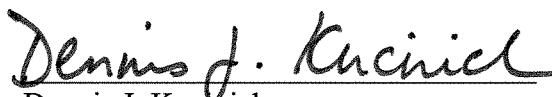
The Honorable Dan Burton
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for Democratic ones. The public hearing process is the mechanism by which Congress most effectively gathers the information necessary to carry out Congress' constitutional functions. As illustrated by the numerous examples set forth above, this process has been used extensively to obtain information from presidential advisors in previous administrations. Governor Ridge is not entitled to a special exemption.

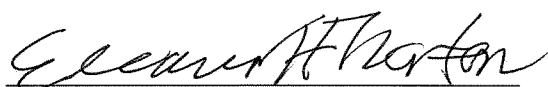
Sincerely,




Henry A. Waxman
Ranking Minority Member
Committee on Government Reform



Dennis J. Kucinich
Ranking Minority Member
Subcommittee on National Security, Veterans
Affairs, and International Relations



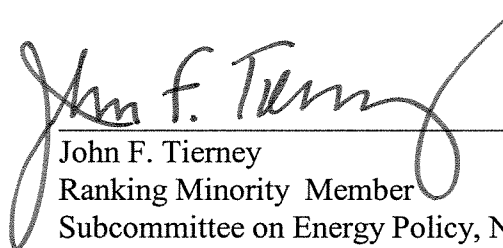
Eleanor Holmes Norton
Ranking Minority Member
Subcommittee on the District of Columbia



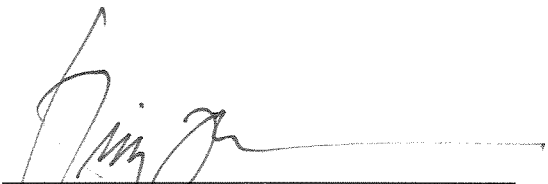
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Subcommittee on Criminal Justice, Drug
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Danny K. Davis
Ranking Minority Member
Subcommittee on Civil Service and
Agency Organization



John F. Tierney
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Janice D. Schakowsky
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Management, and Intergovernmental Relations